

MAR 10 2009

Application Serial No. 10/562,384
Reply to Office Action of December 17, 2008

PATENT
Docket: CU-4616

Amendment to the Abstract**Marked Up Version**

The following marked-up version of the amended Abstract is attached hereto to aid the examiner in identifying the changes:

In the specification, please amend the **Abstract** section of the Application found on the last page of the originally filed application and on the first page of the U.S. Publication No. U.S. 2006/0153951 at section (30), as follows:

Abstract**{Problems}**

~~To provide a~~ A frozen culture packaged body container not configured so
that it does not deformed nor deform or burst even if ~~[[its]]~~ the content and gas in the
container inflate due to a temperature difference between before and after forming a
frozen material packaging body ~~culture within the body and also, wherein the frozen~~
culture packaged body is capable of performing hygienic administration of the
content within, and wherein the frozen culture packaged body has a-

~~{Means for Solving Problems}~~

~~—~~ A vent port covered with a filter material having microbial impermeability and
air permeability ~~[[is]]~~ formed at least in a portion of the container.

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REMARKS

In the Office Action dated December 17, 2008, the Examiner states that Claims 7-11 are pending, 9-11 are withdrawn, and 7-8 have been examined on the merits.

In the Abstract section of the Application, please amend the Abstract for clarity. No new matter has been added to the Abstract section. The amendments to the Abstract can be viewed in the Amendments to the Abstract section of this paper beginning on page 2 in both a clean and marked up version (page 3).

In the Claims, the Applicant has amended claims 7 and 8. Support for the amendments to the claims can be found in the original disclosure, for instance ¶¶[0027], ¶¶[0034], ¶¶[0046], and Figure 1. The Applicant has also newly added claim 12. Support for this claim can be found in the original disclosure, for instance in ¶¶[0027]. Other amendments to the claims are made for clarity. Therefore, no new matter has been added. The amendments to the claims can be viewed in the Amendments section in the Listing of Claims beginning on page 4 of this paper.

In the Office Action, the Examiner indicated that claim 7 was objected to for missing a word. The phrase from which the word was missing has been deleted by amendment herein, and therefore, the Applicant believes that the objection is moot and respectfully requests that the Examiner withdraw this objection.

In the Office Action, the Examiner also rejected claims 7 and 8 under 35 U.S.C. §112, second paragraph. The Examiner objected to the term "thin" in claim 7, however, the term has been removed from claim 7 by way of amendment herein, thereby removing the basis for the rejection. The Applicant submits therefore that amended claim 7 is definite and satisfies 35 U.S.C. §112, second paragraph. The Applicant respectfully requests that the Examiner withdraw this rejection of claims 7 and 8.

In the Office Action, the Examiner also rejected claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over Reynolds (U.S. 2,902,396) in view of

Application Serial No. 10/562,384
Reply to Office Action of December 17, 2008

PATENT
Docket: CU-4616

Sellers (U.S. 3,946,780) and Lactic Acid Bacterium Research and Opinion Exchange Associates. "Signs and Technology of Lactic Acid Bacterium." Sociology Published Center Corp. February 28, 1996.

The Applicant respectfully disagrees .

The Examiner's attention is respectfully drawn to the claim 7 features wherein a frozen culture packaged body is claimed in which the frozen culture is stored in a gable top type container. These amendments are supported by the original disclosure.

Nowhere in the Reynolds disclosure is found a gable top type container. Reynolds discloses a bag type configuration by which the stored material may be in contact with the substantially whole inner wall of the container. The present invention provides a gable top type container. None of the other references cure this defect found in Reynolds. For instance, Sellers discloses a bag shape as opposed to a gable top type. Therefore, at least for this reason alone, the present invention is non-obvious.

The gable top type container of the present invention makes it easier to hold an area wherein the content stored therein is not in contact with the inner walls. On the contrary, Reynolds specifically indicates that the "air may be evacuated from the package compressing the foil wrapper *into intimate contact* with the packaged foodstuff and thus reducing the enclosed air space." (*Emphasis added*, Reynolds col. 2, ll. 36-39.)

This configuration is further defined in new claim 12 wherein the vent port is positioned in the vicinity of the upper end of the container. This configuration prevents air permeable filter material from being damaged due to contact with the frozen material inside, and instead, provides for strongly enhanced fermentation of frozen culture of bifidobacteria. (See Application, Test 6 ¶¶[0080]-¶[0082].)

In addition, the frozen material of Reynolds is precooked frozen food as opposed to the frozen culture of the present invention. The Examiner attempts to

Application Serial No. 10/562,384
Reply to Office Action of December 17, 2008

PATENT
Docket: CU-4616

cure the defects found in the Reynolds disclosure with Sellers. However, the container of Sellers is also not for frozen material, but instead for fermented liquid such as beer, wine, and liquors, or liquid to be fermented.

Clearly, the combination of features found in claim 7 is not found in the references, in whole or in combination. Specifically, the references do not disclose or suggest a frozen culture packaged body in which the frozen culture is stored in a gable top type container. The Applicant submits, therefore, that claim 7 is non-obvious and patentable.

Moreover, the Examiner recognizes that Reynolds does not disclose a vent port, let alone one covered with an air permeable filter. The Examiner uses Sellers to cure this defect found in Reynolds, but Sellers discloses a diaphragm having a Curley porosity of 2 to 120 seconds. The diaphragm in Sellers is provided for escaping fermentation gases outwardly as well as preventing entrance of bacteria. The air permeable filter of the present invention is different. The air permeable filter of the present invention is provided for escaping gases to be used for freezing culture and gas entrapped in the frozen culture during the freezing process.

To the point, despite these differences, the fact remains that altering the Reynolds device by adding a vent is contrary to the teachings in Reynolds and will prevent the Reynolds device from functioning as it was intended to function. Reynolds discloses that the device should be "hermetically" sealed. (Reynolds, col. 3 ll. 27-30.) This is well known to mean that the device is "airtight". (See definition of "hermetically sealed" from the attached Google web definition.) If a vent is added to the Reynolds device, it will not be hermetically sealed, and the advantageous effect of being "substantially impervious to moisture vapor and gas transmission" to "protect against chemical deterioration", will be lost. (See Reynolds col. 3, lines 22-26.)

Reynolds in combination with Sellers and Lactic Acid Bacterium, in whole or in combination, does not disclose or suggest all of the features of the Applicant's invention including, for instance, a gable top type container in which a frozen culture is stored. This configuration has advantages not disclosed or suggested by the

Application Serial No. 10/562,384
Reply to Office Action of December 17, 2008

PATENT
Docket: CU-4616

references. In addition, Reynolds teaches away from combination with Sellers because Reynolds would not operate for its intended purpose of providing a hermetically sealed device if combined with the Sellers. At least for the reasons discussed herein, claim 7 is non-obvious. The Applicant respectfully requests, therefore, that the Examiner withdraw this ground of rejection of claim 7.

It is axiomatic that if an independent claim is allowable, then any claim depending therefrom is also allowable. Since Claim 8 depends from Claim 7, the Applicant respectfully requests that Claim 8 also overcome the rejection. The Applicant thus respectfully requests that the Examiner withdraw the rejection of Claims 7 and 8 under 35 U.S.C. § 103(a).

CONCLUSIONS

The Applicant respectfully contends that all conditions of patentability are met in the pending claims and requests that the amendments to the specification be entered into the record. The Applicant respectfully submits that this application should be in condition for allowance and respectfully requests favorable consideration.

Respectfully Submitted,

March 10, 2009

Date



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define:Hermetically sealed

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Definitions of Hermetically sealed on the Web:

- A hermetic seal is a seal which, for practical purposes, is considered airtight. For example, tin cans are hermetically sealed. ...
en.wikipedia.org/wiki/Hermetically_sealed
- means closed by fusion, gasketing, crimping, or equivalent means so that no gas or vapor can enter or escape.
law.justia.com/us/cfr/title49/49-2.1.1.3.6.0.25.7.html
- windows are completely sealed against the escape or entry of air.
www.morriswindow.com/resources/GlossaryofWindowTerms.htm
- Two or more glass panes assembled in a unit enclosing an airtight space. See Double Glazed.
www.beclawat.com/glossary.htm
- Airtight; impervious to external influence; completely sealed by fusion or soldering.
fcpr.fsu.edu/funeral/modules/management/glossary.htm

define:Hermetically sealed

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